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*American Family Mutual Insurance Company, S.I.*

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

AMERICAN FAMILY MUTUAL INSURANCE  
COMPANY, S.I., a foreign insurer

Plaintiff,

v.

COSMO INVESTMENTS, LLC, a limited liability  
company; MELVYN SEGER, an individual,

Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY RELIEF**

COMES NOW, Plaintiff American Family Mutual Insurance Company, S.I. (“American Family” or “Plaintiff”), and, pursuant to 28 U.S.C. §2201(a), brings this action for declaratory relief and alleges as follows:

**I. PARTIES**

1. Plaintiff, American Family, is a Wisconsin corporation engaged in the business of insurance in Oregon. American Family’s principal place of business is in Dane County,

Wisconsin.

2. Defendant Cosmo Investments, LLC (“Cosmo”) is an Oregon limited liability company with its principal place of business in Multnomah County, Oregon. At all relevant times, Cosmo was in the business of rental property investment, and is the owner of the apartment complex at 2226 NE Weidler Street, Portland, OR (“Property”).

3. Defendant Melvyn Seger, upon information and belief, is a member of Cosmo and an individual residing in Multnomah County, Oregon.

## **II. JURISDICTION AND VENUE**

4. The amount in controversy exceeds \$75,000, exclusive of interests and costs.

5. This court has jurisdiction pursuant to 28 U.S.C. §1332 (Diversity of Citizenship) and 28 U.S.C. §2201(Declaratory Judgment).

6. Venue in the District of Oregon, Portland Division, is proper under 28 U.S.C. §1391 and Local Rule 3.2.

7. An actual controversy exists between the parties as to whether a policy of insurance issued by American Family provides one occurrence limit of \$2,000,000 or an aggregate limit of \$4,000,000 for claims arising out of a fire that occurred on July 4, 2021 at the Property.

## **III. FACTS**

### **A. Underlying Claims**

8. On or about July 4, 2021, a fire started in a trash bin at the Property. The fire spread to the Property’s structure, resulting in damages and injuries to the building and to certain tenants.

9. On or about August 30, 2021, Kelsi Edmonds, through her Guardian Ad Litem Brian Edmonds; Estate of Seth Thompson, through its Personal Representative Steven Thompson; Estate of Robert W. Gremillion, by its Personal Representative Robert Gremillion; and Jonathan

Kinney filed a lawsuit against Cosmo, among others, in the Multnomah County Circuit Court, Case No. 21CV34484 (the “*Edmonds* Lawsuit”). The plaintiffs in the *Edmonds* Lawsuit alleged, in part, that Cosmo, among others, was negligent in maintaining the Property, thereby creating an unreasonable risk of foreseeable harm to the residents at the Property. The plaintiffs continued that such negligence was a substantial factor in causing injury to the plaintiffs. Attached as Exhibit 1 is the Corrected Complaint in the *Edmonds* Lawsuit.

10. On or about November 12, 2021, Ondrea Murray and Patricia Patterson filed a lawsuit against Cosmo, among others, in the Multnomah County Circuit Court, Case No. 21CV43986 (the “*Murray* Lawsuit”). The plaintiffs in the *Murray* Lawsuit alleged, in part, that Cosmo, among others, was negligent in maintaining the Property, and as a result of the negligence, plaintiffs sustained injuries and loss of property. Attached as Exhibit 2 is the Complaint in the *Murray* Lawsuit.

**B. The Insurance Policy**

11. American Family issued a Business Owners Policy, Policy No. 36x0697842, effective April 3, 2021 to April 3, 2022, (the “Policy”), to Cosmo, under which Melvyn Seger may qualify as an insured (Cosmo and Melvyn Seger collectively referred hereafter as “Cosmo”). American Family has been defending Cosmo under a reservation of rights in the *Edmonds* Lawsuit and the *Murray* Lawsuit.

12. The Policy has an each occurrence limit of \$2,000,000 and an aggregate limit of \$4,000,000.

13. The Policy’s Liability And Medical Expenses Limits Of Insurance provision states, in part, as follows:

**D. Liability And Medical Expenses Limits Of Insurance**

1. The Limits of Insurance of Section **II** – Liability shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or “suits” brought; or
  - c. Persons or organizations making claims or bringing “suits”.
2. The most we will pay for the sum of all damages because of all:
  - a. “Bodily injury”, “property damage” and medical expenses arising out of any one “occurrence”; and
  - b. “Personal and advertising injury” sustained by any one person or organization;

is the Liability and Medical Expenses limit shown in the Declarations. But the most we will pay for all medical expenses because of “bodily injury” sustained by any one person is the Medical Expenses limit shown in the Declarations.

\* \* \*

**4. Aggregate Limits**

The most we will pay for:

- a. All “bodily injury” and “property damage” that is included in the “products-completed operations hazard” is twice the Liability and Medical Expenses limit.
- b. All:
  - (1) “Bodily injury” and “property damage” except damages because of “bodily injury” or “property damage” included in the “products-completed operations hazard”;
  - (2) Plus medical expenses;

- (3) Plus all “personal and advertising injury” caused by offenses committed;

is twice the Liability and Medical Expenses limit.

\* \* \*

The Limits of Insurance of Section II — Liability apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

14. The Policy contains, in part, the following definitions:

**F. Liability And Medical Expenses Definitions**

\* \* \*

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

17. “Property damage” means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

\* \* \*

18. “Suit” means a civil proceeding in which damages because of “bodily injury”, “property damage”, or “personal and advertising injury” to which this insurance applies are alleged. ...

15. The Policy states that regardless of the number of insureds, claims or “suits” brought, or persons making claims or bringing “suits”, the most that American Family will pay because of all “bodily injury”, property damage” and medical expenses arising out of any one

“occurrence” is the each occurrence limit of \$2,000,000, which is the Liability and Medical Expenses limit shown in the Declarations.

16. The injuries and damages claimed in the *Edmonds* Lawsuit and the *Murray* Lawsuit all arise out of the single event of the fire, which occurred on July 4, 2021.

#### **IV. CLAIM FOR RELIEF: DECLARATORY JUDGMENT**

17. American Family repeats and incorporates by reference herein the allegations of paragraphs 1 through 16 above.

18. An actual controversy exists between the parties as to the available limits of insurance under the Policy for the claims arising out of the fire loss at issue, as alleged in the *Edmonds* Lawsuit and the *Murray* Lawsuit.

19. Because all claims arise out of the single event or occurrence of the fire, the Policy provides an each occurrence limit of \$2,000,000.

20. Upon information and belief, Cosmo takes the position that the aggregate limit of \$4,000,000 is implicated for the claims arising out of the fire loss.

#### **V. PRAYER FOR RELIEF**

WHEREFORE, American Family Mutual Insurance Company, S.I. prays for relief against Cosmo Investments, LLC and Melvyn Seger as follows:

A. For entry of declaratory judgment that the claims in the *Edmonds* Lawsuit and the *Murray* Lawsuit arise out of the single event or occurrence of the fire.

B. For entry of declaratory judgment that the each occurrence limit of \$2,000,000 is available for all of the claims arising out of the fire loss.

C. For such and other and further relief as the Court may deem just and equitable.

Dated: December 30, 2022

GORDON REES SCULLY  
MANSUKHANI, LLP

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By: s/Sally S. Kim  
Sally S. Kim (OSB # 122253)  
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COMPLAINT FOR DECLARATORY RELIEF  
Page 7 of 7  
Case No.

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